# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of BASCUM TILMAN BARNETT IV and ZACHARY TYLER BARNETT, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BASCUM TILMAN BARNETT III,

Respondent-Appellant.

UNPUBLISHED
February 17, 2005

No. 254971
Macomb Circuit Court
Family Division
LC No. 00-055644

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Respondent appeals by delayed leave granted from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We reverse.

The allegations against respondent in this matter are extremely serious. It was alleged that the children were removed from respondent in October 2001, while they were living in the state of Florida. It was further alleged that a Florida court concluded during an adjudication that respondent had sexually and physically abused the children and had neglected the children's environment and medical care. In addition, it was alleged that respondent had been convicted of a sexual crime involving a minor and had other criminal charges pending against him. The children were later placed with their mother in Michigan, who eventually released her rights to the children after the petition initiating these child protective proceedings had been filed. The children had serious emotional needs and were placed in a residential care facility, where they remained at the time of the termination hearing. Throughout these proceedings, respondent's whereabouts were unknown. He did not appear before the court and was not represented by counsel. After the proceedings, respondent surfaced and this appeal followed.

Respondent first argues that the trial court did not have jurisdiction over him because notice was defective. We agree.

A parent of a child who is the subject of a child protective proceeding is entitled to personal service of a summons and notice of proceedings. MCL 712A.12; MCR 3.920(B)(4)(a). Substituted service is sufficient to confer jurisdiction on the court. *In re SZ*, 262 Mich App 560, 565; 686 NW2d 520 (2004). However, before ordering substituted service, the trial court must

find that personal service is impracticable. *In re Adair*, 191 Mich App 710, 714; 478 NW2d 667 (1991). In addition to testimony regarding the issue, the trial court may rely on documents in the lower court file when determining whether notice can be made by substituted service. *In re SZ*, *supra* at 526.

In this case, in ordering substituted service, the trial court relied upon the protective services worker's statements that respondent's whereabouts were unknown and the similar testimony of the children's mother. However, the trial court failed to find that reasonable efforts had been made to determine respondent's whereabouts. The order in which it purported to so find is unsigned and was never entered. Thus, the court never actually concluded that reasonable efforts had been made. *Miskinis v Bement*, 325 Mich 404, 405-406; 38 NW2d 897 (1949) (courts speak through their written orders). Moreover, under the limited facts of this case, the trial court erred in ordering substituted service. Unlike in *In re SZ*, in this case there was little, if any, meaningful attempt to either locate respondent or determine his last known address prior to performing substituted service. The trial court made no inquiries as to his last known address in Florida, or the states in which he had been most recently located, or other such pertinent factors. It would have been reasonable for petitioner to contact the worker in Florida to determine respondent's last known address or make inquiries in the various states where charges against respondent were allegedly pending. However, no such efforts were made prior to the substituted service by publication, and even after the publication the evidence regarding the continuing efforts to locate respondent was nothing more than generalized statements that he could not be located.

The absence of notice to a respondent in a protective proceeding constitutes a jurisdictional defect and makes all proceedings in the family division void with respect to the respondent denied notice. *In re AMB*, 248 Mich App 144, 173; 640 NW2d 262 (2001). Accordingly, we must reverse the trial court on this basis and remand for further proceedings.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Donald S. Owens